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Comments: I am a Georgetown Law student writing to urge anchors remain on wilderness land. Below is a summary of the conflict, climbing advocacy, and possible next steps for federal agencies.

## I. Introduction

When Congress passed the Wilderness Act in 1964, it could not have foreseen the resulting factions that arose to defend their use of these wilderness areas. This Act aimed to create pieces of preserved land free of human influence by forbidding "permanent installations." The shift in environmental laws from resource protection to recreational protection in wilderness areas followed the changing views of what the wild was for. Instead of viewing nature as a store of raw resources, American recreationalists valued the wild as a place to escape and recreate. However, it is difficult for the Wilderness Act's managing agencies to satisfy both pure preservationists, who consider nearly any human sign in wilderness areas in violation of the Act, and higher impact groups like climbers, who argue their right to recreate should be respected as much. Preservationists point to aesthetic issues arising from climber use, such as chalk marks and hardware placement, as disrupting their enjoyment of nature, while climbers hold their sport is compatible with the Wilderness Act. The issue therein lies: who is right?

Currently, federal agencies are reconsidering classifying key pieces of safety gear for outdoor climbing as a prohibited installation in wilderness areas protected by the 1964 Act. This would effectively ban safe outdoor climbing in these areas and may ultimately harm the long-term preservation of wilderness at large by removing some of very groups who advocate for its protection. This paper aims to identify the history behind the Act and anchor controversy, illuminate the perspectives various conceptions of wilderness, and provide suggestions to better reconcile recreational use and wilderness use.

## II. The Wilderness Act of 1964

The Wilderness Act overlays existing public lands with a National Wilderness System managed by the federal government to ensure the continued preservation of wild areas for future enjoyment and which has "outstanding opportunities for solitude or a primitive and unconfined type of recreation."<sup>1</sup> In this way, it employs the idea of intergenerational equity to drive sustainable management of wilderness areas and marked a change in the trend of environmental law from resource extraction to environmental protection.<sup>2</sup> Courts and agencies now use the Wilderness Act and other statutes which were focused on resource extraction to protect the current interests of recreational use.<sup>3</sup>

This legal construction is separate from that of the National Park System, which is overseen by the National Park Service and protects a variety of both natural and historical areas.<sup>4</sup> Wilderness areas, in contrast, focus on protected untamed areas in public lands. The Act was the birthchild of the Wilderness Society's Howard Zahniser, who pushed for a wilderness preservation law which balanced economic use and wilderness protection.<sup>5</sup> It was driven in part by acknowledging the idea of wilderness divorced from science and recreation, and to show "wilderness did not belong to an elite, but was to be enjoyed by all."<sup>6</sup> Zahniser was motivated not through a wilderness's value to a particular use, but its intrinsic value, "because of a character it has - not because of a particular use that it serves."<sup>7</sup> Currently, the Act is administered by the Forest Service (USFS) within the Department of the Agriculture and the National Park Service (NPS), Fish and Wildlife Service (FWS), and the Bureau of Land Management (BLM) within the Department of the Interior (DOI).<sup>8</sup> The Act now protects over 112 million acres of wilderness area, more than ten times the initially protected 9.1 million acres.<sup>9</sup> Each agency is responsible for different wilderness areas.

The Act enjoyed wide political support due to its concessions and compromises with preexisting uses and extractive industry. For instance, it allows preexisting motorized uses to persist, and the final version added a provision for mineral exploration in wilderness areas.<sup>10</sup> However, most mechanical means of transport, including bikes, are prohibited aside from the extent necessary to administer the area.<sup>11</sup> While the Act signals society's acceptance that wilderness has value, there is little agreement on what it consists of or its proper utilization.<sup>12</sup> It contains a vision of a landscape mostly devoid of human construction by declaring there shall be "no structure or installation" within any wilderness area.<sup>13</sup> Previous decisions have included dams and docks as installations and structures prohibited by the statute.<sup>14</sup> One early influential decision classified the construction of watering troughs which would benefit the local wildlife as forbidden by the Act.<sup>15</sup>

For climbing, the difficulty lies in the hardware left behind. Climbing consists of moving along an established route up a cliff face using either permanent or temporary gear, or "anchors" to catch a fall. It is here the dispute lies: should fixed anchors be considered a banned permanent installation in wilderness areas? This topic is an unusual schism between two usually friendly and often-allied groups. Preservationists, who favor minimal intrusion, point at aesthetic issues arising from climbing, such as obvious chalk marks and bolts, as a disruption to their enjoyment of "untrammelled" wilderness.<sup>16</sup> With more intensive recreational use comes higher impact on the plant and animal species which inhabit wilderness areas.<sup>17</sup> Climbing disrupts natural habitats and ecosystems on cliff faces as well as along the base through both established and user-created trails.<sup>18</sup> It is important to note the differences between two styles of climbing. Sport climbing heavily relies on the use of fixed metal anchors and bolts to ensure protection while climbing with a rope. The style focuses on the difficult physical movement to reach the top of the route. Traditional, or "trad" climbing, instead relies mostly on placing temporary gear within the rock for protection as well as installing permanent anchors where temporary gear cannot be placed. This style concentrates more the exploration of the route and is less impactful on the cliff face than sport climbing. However, even temporary gear left behind could be considered a fixed anchor.<sup>19</sup> While sport climbing is high impact, it is normally relegated to non-wilderness areas. Traditional climbing tends to place protective bolts only where absolutely necessary, and thus is better suited for wilderness areas. Climbing routes are established through "first ascents" of a particular method to climb a face. It is the setter of the route who determines bolt placement and must obtain any necessary permits.

There is no overarching direction from the Act to resolve the fixed anchor debate for the land agencies and the judiciary. Agencies and the courts are so creating a kind of "common law of outdoor recreation" to fill in the gaps.<sup>20</sup> Faced with growing and diverse groups of recreationalists whose interests are often at odds as well as budget shortfalls, the agencies often must make do to best balance recreational and conservation interests.<sup>21</sup> Courts generally "sustained agency decisions prioritizing the experience of wilderness solitude over more intensive recreational activities, as the Forest Service did when it limited whitewater boating through a designated wilderness area."<sup>22</sup> The lack of an overarching legislative direction has led to divergent wilderness plans for each of the four land management agencies as they balance their organic statutes and wilderness goals.<sup>23</sup> This leads to disparate treatment of the same groups depending on which agency is managing the wilderness area.<sup>24</sup>

Beyond regulation in wilderness areas, climbing is often ignored or lacks a unifying standard by the agencies.<sup>25</sup> It predates the Wilderness Act, but has suffered under inconsistent management on public lands due to the scattershot approach of agencies testing methods of curtailing impact on the environment and balancing user needs, upheld by the courts.<sup>26</sup> Federal agencies have regulated climbing through permitting requirements, fixed anchor policies, trail designations, and area or activity-level closures.<sup>27</sup> Each wilderness area must adopt a management plan in accordance with the National Environmental Policy Act (NEPA), often with supplementary plans regarding wilderness use.<sup>28</sup> These wilderness plans "must protect and maintain the social and ecological characteristics that provide the basis for wilderness recommendation."<sup>29</sup> Fixed anchors are a sticking point in many management plans because of the dispute over what wilderness should contain as well as administrative burdens and limitations. However, these management plans often lack a national unifying

standard and leave discretion to individual forest managers, creating additional units of uneven enforcement measures.<sup>30</sup>

Climbing grew in popularity in the late 1980 and 1990s, creating tension with land managers.<sup>31</sup> The fixed anchor dispute began in earnest with a 1988 fixed anchor ban in the Superstition Wilderness in Arizona, followed by a retraction that fixed anchors “have a historical and legitimate use in wilderness climbing.”<sup>32</sup> A national task force assembled from wilderness advocates, outdoors people, land managers, and climbers worked together with USFS to create a set of guidelines to manage the issue, such as setting visibility and density of fixed anchors.<sup>33</sup> These recommendations were ignored when the Department of Agriculture Office of General Counsel issued an internal opinion finding fixed anchors incompatible with wilderness areas.<sup>34</sup> Ten years later, USFS attempted a similar ban amidst individual forest supervisors setting restrictive rulings, stating it was simplifying clarifying policy and the interpretation of “permanent installations.”<sup>35</sup> The 1998 USFS report declared rock climbing in general as an authorized wilderness activity in the Sawtooth Wilderness, but held permanent climbing aids as impermissible and stating it was “not for wilderness users to undertake their recreational activities by whatever means necessary.”<sup>36</sup> In part, this ban was enacted from the suggestions of a climber in the study group who had become disillusioned from the impacts of sport climbing and the lack of national guidance.<sup>37</sup> Groups such as the Access protested, but the agency instituted the ban nationwide.<sup>38</sup> USFS retracted when REI and a Washington State Senator mounted a protest; the Senator attached a rider to an appropriations bill that removed federal funding for enforcement of the ban.<sup>39</sup> A committee formed by the Secretary of Agriculture met for a negotiated rulemaking regarding the issue.<sup>40</sup> While the USFS met several times through 2001 with interested groups, no rules were promulgated on this topic.<sup>41</sup>

In 2011, the NPS began considering the issue in its wilderness areas, which contain some of most well-known climbing routes like El Capitan in Yosemite.<sup>42</sup> In 2013, it eventually settled on a Director's Order heavily restricting fixed anchors in wilderness areas, allowing for the “rare” fixed anchor replacement or addition through a permit system considered on a case-by-case basis.<sup>43</sup> This allowed some continuance of traditional route establishment, albeit with a warning that if “unacceptable impacts are occurring in wilderness as a result of climbing, the park superintendent may deem it necessary to restrict or prohibit the placement of fixed anchors.”<sup>44</sup> NPS's wilderness areas already contain well-developed climbing routes, and perhaps concern over increases in climbing route establishment led to the Order.<sup>45</sup>

In 2022, the NPS reconsidered the issue of reclassifying installations in a scoping document prepared under NEPA's environmental assessment requirements for Joshua Tree National Park.<sup>46</sup> The scoping document examined the impacts and alternatives of a climbing management plan and summarized public comments regarding the plan.<sup>47</sup> NPS began to raise questions regarding climbing's impact on Joshua Tree National Park due to increased park visitation and suggested reclassified climbing fixed anchors and bolts as prohibited installations.<sup>48</sup> 25% of the climbing routes in Joshua Tree fall in wilderness area.<sup>49</sup> These scoping documents scrutinized the use of fixed anchors with wilderness area characteristics: “If a particular climb requires the occasional placement of a fixed anchor for belay, rappel or protection purposes, this action, in and of itself, does not necessarily impair the future enjoyment of wilderness or violate the Wilderness Act. However, wilderness designation requires particular consideration and care in allowing those uses with the least adverse impact on wilderness resources and character. Fixed anchors or fixed equipment may be appropriate but must be closely managed under the direction of an approved plan.”<sup>50</sup> Access Fund and other advocacy groups grew concerned this interpretation would limit wilderness climbing, seeing a threat not only to “safely climb some of the most iconic routes in America, from big walls in Yosemite and Zion to alpine spires in Rocky Mountain National Park, but also the potential erosion of climbers as Wilderness advocates.”<sup>51</sup> Classifying anchors as installations would require permit requests for new anchors to meet a higher “minimum requirement analysis,” (MRA) as an exception under Section 4(c) of the Wilderness Act.<sup>52</sup> As a prohibited installation, bolt placement would be considered through a multi-step process of considering whether it is necessary, necessary in a wilderness area, alternatives, mitigation

measures, and other factors which ensure minimal impact from the prohibited action.<sup>53</sup> This analysis is subject to different interpretations from different agency guidance as well as individual land managers.

The history of fixed anchor and climbing management demonstrates the difficulty in reconciling wilderness characteristics and accompanying increased damage to climbing areas. NPS, as manager for some of the most popular areas, faces increased administrative costs of programs limiting climbing in comparison to an easier outright ban. However, categorizing fixed anchors as prohibited installations is problematic. As others remark, this interpretation fixes climbing anchors on par with prohibited docks and roads as opposed to other permanent safety features such as handrails. Climbing routes could be seen as “a vertical hiking trail.”<sup>54</sup> These fixtures are critical to safe climbing outdoors, and removing their use effectively bans 90% of the routes in wilderness areas out of safety concerns.<sup>55</sup> Over time, bolts become worn or rusted, and restricting a replacement process often performed by the local community would eventually lead to unsafe anchors.<sup>56</sup> Outright removal of fixed bolts leads to preventable death due to unsafe gear placement, and reliance on natural anchors may result in harsher environmental impact such as uprooting trees.<sup>57</sup> It seems incongruous that climbers, as wilderness advocates, should be removed from these areas.

### III. The Anthropocene

The Anthropocene denotes an epoch humanity as a “major geological and environmental force, as important as, or more important than, natural forces.”<sup>58</sup> In the age of the Anthropocene, areas with few signs of human activity increase in value as humanity expands to all reaches of the globe. This orientation is apparent in the statute's definition of “wilderness”:

(c) A wilderness, in contrast with those areas where man and his works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.<sup>59</sup>

This creates a tension between wilderness and humanity. The Anthropocene holding is human's impact on the environment infiltrates even supposedly untouched areas. Man is now not a visitor, but a tenant of wilderness areas through numerous environmental impacts. A number of figures have discussed and influenced the idea of wilderness and may inform this tension between the statute's definition and the current environment, such as William Cronon, Edward Abbey, Aldo Leopold, and Joseph L. Sax.

These authors have competing views on what wilderness is for, but all engage with the Transcendental belief that wilderness can be beneficial to human welfare.<sup>60</sup> Aldo Leopold conceptualized the idea of an appreciation for nature beyond its basic resource value. Joseph L. Sax discussed his view of the proper use of the national park system as a place beyond recreation but also reflection. William Cronon and Edward Abbey seem to agree on the concept of an outer force influencing the general public's conception of nature and wilderness but disagree on a proper method of appreciation for it. Each perspective illuminates the ideology behind a segment of wilderness area users.

Aldo Leopold's land ethic was a first step in acknowledging the value of nature divorced from use. This ethic land ethic “simply enlarges the boundaries of the community to include soils, waters, plants, and animals, or collectively: the land.”<sup>61</sup> As a member of the community, humanity must recognize and respect the

right of the land and its inhabitants to exist beyond human control, and to evaluate human impacts in the evolutionary process.<sup>62</sup> This idea is complimentary to recognizing the cascading effects of the Anthropocene. At the same time, Leopold recognized the importance of wilderness preservation by advocating for the first federally recognized wilderness area in the United States.<sup>63</sup>

Since the 1880s, wilderness areas became romanticized as places of refuge and respite from increasingly urbanized life.<sup>64</sup> William Cronon critiques this view by pointing out the inherent duality of wilderness as both a product of and sign of civilization. Even as “untouched” areas are altered by development, they “could hardly be contaminated by the very stuff of which it is made.”<sup>65</sup> Herein lies the “the central paradox: wilderness embodies a dualistic vision in which the human is entirely outside the natural. If we allow ourselves to believe that nature, to be true, must also be wild, then our very presence in nature represents its fall.”<sup>66</sup> Cronon remarks the wild became “not a site for productive labor and not a permanent home; rather, it was a place of recreation. One went to the wilderness not as a producer but as a consumer.”<sup>67</sup> He comments upon a shift from nature as a place where people lived to a place visited and devaluation of the nature persisting in urban environments.

Cronon, Abbey, and Sax criticize the commercial drive of tourism to consume a nature already shaped by human decisions. Edward Abbey coins the phrase “industrial tourism” to describe the manufacturing of a lived wilderness created through the decisions of the Park Service.<sup>68</sup> He further criticizes those who are attached to the safety of their car and the roads that cater to a vehicle-driven national park experience.<sup>69</sup> Sax in his influential *Mountains without Handrails* notes that this kind of commercial tourism has become a parasitic presence in parks.<sup>70</sup> He acknowledged the need for limitation on unfettered recreational use of national parks to preserve them. He introduces the idea of “unbundling” recreational demand to where heavy impact activities are limited to private lands, and the focus instead is to alleviate pressure on public lands.<sup>71</sup> Sax and Abbey categorize natural areas as a place not to be consumed but preserved. In this, they differ from Cronon in they both seem to acknowledge natural areas are intrinsically more valuable, although Abbey prefers a purely preservationist approach.<sup>72</sup> What is key is Sax's focus on the demands placed by the tourist of public lands. If these tourists were able to moderate their own behavior threatening public lands, perhaps there would be less need to regulate wilderness areas.

Leopold's land ethic would be beneficial here in educating the general public, although wilderness users tend to align more with this view. Unfortunately, it seems the “most serious obstacle impeding the evolution of a land ethic is the fact that our educational and economic system is headed away from, rather than toward, an intense consciousness of land.”<sup>73</sup> A USFW 2001 Report's definition comes closer to capturing the land ethic: “The character of wilderness refocuses our perception of nature and our relationship to it. It embodies an attitude of humility and restraint that lifts our connection to a landscape from the utilitarian, commodity orientation that often dominates our relationship with nature to the symbolic realm serving other human need.”<sup>74</sup> Similarly, Leopold points out that focusing on the economic incentives “tends to ignore, and thus eventually to eliminate, many elements in the land community that lack commercial value, but that are (as far as we know) essential to its healthy functioning.”<sup>75</sup> The Wilderness Act contains a contradiction in this respect. While it speaks of “solitude” and “primeval character” and bans permanent installations, it also allowed claims for mineral exploitation up to 1983.<sup>76</sup> Even the heart of wilderness protection required economic incentives in return for future protection and bears the physical mark of this infrastructure.

Cronon points out the fallacy of casting nature to the reaches of national parks and adopting too high of a standard for what counts as natural.<sup>77</sup> He reminds us of “the wildness in our own backyards, of the nature that is all around us if only we have eyes to see it.”<sup>78</sup> He has been criticized for damaging the environmentalist movement in favor of opponents pushing for wilderness development in this dismissal of natural areas.<sup>79</sup> Cronon argues conservationists, “often point to 'untouched' ecosystems as the best and richest repositories.”<sup>80</sup> The formulation of creating designated areas for conservation is the enclave

idea of preservation, where designated areas contain the totality of conservation goals, freeing the rest of the land for economic development. This idea limits areas of preservation to where it can preserve biodiversity. Indeed, under the Endangered Species Act, conservationists often rely on a singular charismatic species to preserve an area and “not on the thousands of other species that comprise an ecosystem, but whose existence is unknown to most people.”<sup>81</sup> The Wilderness Act seemingly acknowledges this through its focus on recreation and land in “unimpaired” condition.<sup>82</sup> Land management agencies, however, struggle with administering a concrete policy based on this vague definition.

In the Anthropocene, human disturbances can take the form of invasive species and changing ecosystems. Reconciling nature and development requires defining human disturbances. There is a split in the ideology of acknowledging wilderness areas are “still less disturbed than other areas outside the wilderness system” even if they are not pristine.<sup>83</sup> Some biologists hold “conservation can no longer focus only on preserving and restoring ecosystems of the past...[and] no longer treat natural systems as separate from human systems.”<sup>84</sup> Other biologists argue the natural processes should remain free from human influence, while yet others hold for targeted interference. This makes for difficult decisions in the name of the Wilderness Act to preserving a natural area and biodiversity. For instance, efforts to replant native white pines in wilderness areas have consistently been turned down as manipulation of natural processes in violation of the Act.<sup>85</sup> This is aligned with Zahniser's vision for the Act, who saw wilderness areas as free from human influence and processes.<sup>86</sup> Others argue these projects are necessary to preserve native wildlife.<sup>87</sup> This raises the question of what degree of natural to attain: pre-settlement, the status quo, or focus on a particular species.<sup>88</sup> NPS's guidance clarifies ecological interventions are to correct or mitigate harmful impact to the ecosystem, but also killing predators to protect livestock.<sup>89</sup> It acknowledges that “wildness is not the absence of all human effect; it can persist in environments that have been altered ... as long as we refrain from interfering with nature's autonomous response.”<sup>90</sup>

These are just some of the questions facing agencies stemming from the Wilderness Act's conception of wilderness and managing different users. The theories of Leopold, Abbey, Cronon, and Sax drive different factions, such as the pure preservationists and recreationalists. Reconciling climbers with these groups is addressed in the following section.

#### IV. Advocacy

##### a. Climbers as Advocates

Despite Cronon's assertions, removing the human from within this land is anathema to the environmental advocacy which led to the creation of the Act in the first place. Some advocates argue removing dedicated recreationalists from the lands which they inhabit cuts off the life cycle of the advocate, for it removes the initial inspiration for the protection of wilderness.<sup>91</sup> Access Fund argues if “climbers are no longer welcome in Wilderness, the long and rich history of climbers as vocal advocates for conservation will be undermined. We need an army of people to protect public lands, and it's critical that climbers remain among those numbers.”<sup>92</sup> Here, pure preservationists and low impact recreationalists are rarely at conflict, for “it is rare that people desire to protect natural resources without any attendant personal benefit.”<sup>93</sup> Preservationists can “use” wilderness areas through a satisfaction of preserving biodiversity.<sup>94</sup> Others counter that the very same recreation groups who battle for wilderness designation balk at the resulting restrictions on their use.<sup>95</sup> They imply the economic incentives underlying industry involvement of recreational uses contaminates the use of wilderness areas through increased access.<sup>96</sup> Unfortunately, the function of the current legal system requires speech in economic terms. With Executive Orders requiring a cost-benefit analysis to every piece of legislation, valuation in dollar amounts often is the means with to influence.<sup>97</sup> For climbers, legal standing in the policy process may be tied to such economic impacts from restrictions.<sup>98</sup> Indeed, legal standing has become more difficult in for recreationalists following a Supreme Court decision limiting the ability of outdoor groups to sue agencies for failure to take action in a wilderness area.<sup>99</sup>

In some respects, climbing represents the very essence of the Wilderness Act for recreational activity. El Capitan in Yosemite is the crown jewel of climbing in the United States and a designated wilderness area.<sup>100</sup> Alex Honnold famously free soloed the sheer cliff, climbing 3,000 feet without the safety of a rope.<sup>101</sup> Tommy Caldwell and Kevin Jorgeson spent 19 days to complete a first ascent of the Dawn Wall side of El Capitan, prompting a call from then-President Obama.<sup>102</sup> The wide-spread media attention sparked interest in big wall climbing.<sup>103</sup> Recently, NPS tested a big wall permit system due to the environmental impact of a high volume of big wall climbers on El Cap.<sup>104</sup> Wonder at these natural areas mixed with wonder of the athletic feat of these climbers. Leopold argued for a surreptitious change, &quot;to set up within the economic juggernaut certain new cogs and wheels whereby the residual love of nature&quot; may recreate a value in wilderness.<sup>105</sup> Perhaps he meant for the intrinsic value biodiversity to come to the fore, or perhaps recreation groups can function as advocates where the land itself is valued for its visual and recreational potential. At the same time, damage arising from increased usage is not without challenge.

#### b. Damage and Self-Regulation

This advocacy comes at a cost in the eyes of pure preservationists. The spectrum of human impact on wilderness areas creates conflict.<sup>106</sup> Climbing activities leave behind metal anchors as well as the usual debris from human habitation. There are numerous scientific studies documenting the adverse impacts on cliff biodiversity and changes in fauna behavior.<sup>107</sup> Increased visitation of popular climbing spots leads to self-created paths, which impacts the local ecosystem through changing soil morphology and introduction of non-native species.<sup>108</sup>

Another challenge is the ethos of climbing is embedded in rebellion and eschewing of regulation.<sup>109</sup> This is changing with the advent of climbing in the Olympics and exposure to the broader public. One incentive of climbing is that there is a constant search to &quot;develop&quot; new climbing areas and attain first ascents to garner success.<sup>110</sup> However, this search for the newest routes confronts a limited medium in which to create.<sup>111</sup> This quest to establish the newest climbing routes leads to overzealous bolters, those who put up new routes. One incident resulted in a climber bolting over ancient native petroglyph panels.<sup>112</sup> Australian parks were forced to close certain climbing areas due to irreverent bolting over native cave art.<sup>113</sup> On the other hand, parks are quick to shut down areas that pose conservation problems. The Act also prohibits the use of motorized drills, so all climbers utilize hand drills to establish routes and minimize noise impacts. These are often regulated by permits, with a limited 20 or so permits issued per year to establish new routes.

Some contend that climbers leave behind a visual impact that impairs the solitude and untouched ethos behind wilderness areas. Some studies surveying visitor attitudes towards climbing's impacts on cliff faces have noted the low visual impact of fixed anchors according to survey participants, remarking that &quot;despite the growing scientific evidence that anchors are not perceived as an impact on the resource, management perceptions may be more guided by the simple knowledge that these 'installations' exist on managed lands.&quot;<sup>114</sup> The field of recreation ecology is only a recent addition to the study of impact on natural areas. New developments within the field suggest lower impact visitation spread over more wilderness areas may minimize ecological impact.<sup>115</sup> However, studies have also found sport climbing creates three times the impact on vegetation than traditional climbing.<sup>116</sup> The ban on fixed anchors has few potential upsides and fails to achieve its intended purpose. While anchors have low visual impact, chalk, on the other hand, leaves a greater visual impact. Regulations concerning colored chalk would minimize visual impact and provide a lesser restriction than a total ban on climbing in wilderness areas.

This is not a call to remove all restrictions, but to find a happy medium in between a total ban and unfettered use.<sup>117</sup> Removing regulations entirely leaves natural areas vulnerable, and even with management plans there is &quot;clear evidence of degradation from the forces that aim to sustain them: climbers and land managers.&quot;<sup>118</sup> Overuse of the rock may impact the rock itself, as seen in delicate sandstone and desert rock that forced Texas State park Hueco Tanks to heavily regulate use.<sup>119</sup> Other conflicts interfere with

land agencies' ability to regulate. For instance, Bear Ears National Monument has contracted and expanded over the course of the Obama, Trump, and Biden administrations. This area contains both tribal lands and developed climbing area, and these usages are coming increasingly in conflict. The USFS and BLM jointly regulate the monument, but disputes over the shifting boundaries led to underenforcement of regulations.<sup>120</sup> As Leopold inquires, when will "governmental conservation, like the mastodon, become handicapped by its own dimensions"?<sup>121</sup> The need for local enforcement and self-regulation by the community softens the damage from such underregulating by federal agencies. As Access Fund argues, "agencies already have every tool they need-all the legal authority-to manage climbing...There is no reason to reinterpret the Wilderness Act."<sup>122</sup>

Federal management strategies are best equipped to determine individualized plans suited to the unique features of each natural areas under a coordinating national plan. There are two kinds of management strategies, direct and indirect. Direct works directly to regulate visitor behavior, while indirect influences the choices visitors make to alter behavior.<sup>123</sup> Management plans approved by federal agencies aim to balance preservation of local ecosystems and recreational needs. Timothy Dolan's response to the fixed anchor issue suggested splitting areas into zones of permissible, impermissible, and permissible with supervision. Similarly, Michael Sammartino suggested specific regulations promulgated by land management agencies to specify bolt placement approval processes, guideline, and other route development practices on public lands to reduce conflict between climbers and land managers.<sup>124</sup> He emphasizes that traditional climbing technique values a "clean climbing" aesthetic, "leaving a minimal trace to provide the next climber with the most "natural" experience."<sup>125</sup> This is the very spirit of the Wilderness Act as well as the NPS Director's Order and NPS regulations.<sup>126</sup> Recall the differences between sport and traditional climbing. Sport climbing require additional development and bolting, often resulting in additional changes to the rock face.<sup>127</sup>

Advocacy groups such as the Access Fund and the American Alpine Club (AAC) aim to educate recreationalists on these dangers to preserve access for all to avoid the tragedy of the commons.<sup>128</sup> Indirect management programs such as this acknowledge self-regulation may dampen the need for severe regulation or outright bans. They aim to self-regulate the community amidst the generally disjointed legal framework concerning recreation.<sup>129</sup> The Access Fund establishes local chapters in national parks which educate the daily visitors on proper visitation behavior. They also serve as a means of policing the community to ensure continued compliance from other climbers with the regulations. Other management programs established by federal agencies often espouse group size limits and Leave No Trace Principles to ensure limited impact from visitors.<sup>130</sup> These Principles include planning and preparing ahead of time, traveling and camping on durable surfaces, proper waste disposal, leaving what you find, minimizing campfire impacts, respecting wildlife, and consideration of other visitors.<sup>131</sup> While climbing inevitably impact other users' solitude, abiding by minimal impact practices reduces conflict and impact on the environment. With these two management strategies, wilderness area damage may be kept to a minimum while ensuring continued access.

## V. America's Outdoor Recreation Act of 2023

The Wilderness Act embodies the intersection of economic interests and preservation of wild areas, which is illustrated by subsequent legislation. Congress may respond to permissible use disputes through legislation under the Wilderness Act.<sup>132</sup> Section 1232 of the 2019 John D. Dingell, Jr. Conservation, Management, and Recreation Act attempted to address the fixed anchor dispute: "Nothing in this part prohibits recreational rock climbing activities in the wilderness areas, such as the placement, use, and maintenance of fixed anchors, including any fixed anchor established before the date of the enactment of this Act...in accordance with the Wilderness Act."<sup>133</sup>

However, advocacy groups grew concerned agencies would alter regulations and ban fixed anchors. Climbing groups banded together with outdoor recreation industry to back the proposed America's Outdoor Recreation Act,



first introduced in 2022.<sup>134</sup> Section 122 of the proposed legislation would require the Secretary of Agriculture ensure climbing and fixed anchors as a “allowable activity” under the Wilderness Act.<sup>135</sup> Opponents of the bill criticize it a potential “dilution” of the Wilderness Act and hold agency's decision-making sufficiently balances recreational climber's interests with wilderness preservation.<sup>136</sup> They claim it would open the agency to litigation at every decision.

Sponsors of the Bill include Senator Manchin of West Virginia, who wants the “outdoor economy in West Virginia” to mature.<sup>137</sup> New River Gorge in West Virginia, a newly minted National Park located near an old mining town, is a famed destination for rock climbing. The economic interests in the area have transformed from exploitation of mineral resources to leaning in on the value of raw land and outdoor recreation.<sup>138</sup> The value of the non-consumptive recreation industry now outstrips the economic output of consumptive resource extraction like mining and timber harvesting.<sup>139</sup> The surrounding area has benefited from the ecotourism of the park, but also areas also face growing pains through infrastructure costs as well as search as funding search and rescue.<sup>140</sup> They must also consider the threat of lawsuits. The federal government is generally shielded from tort liability of climbing accidents under the Federal Tort Claims Act discretionary function exception, although obvious hazards in other recreational activities may still trigger liability.<sup>141</sup> In the seminal case for climbing, the court held the Park Service exempt precisely because climbing was valued for its freedom from regulation.<sup>142</sup>

However, perhaps this legislation is an opportunity to build a more cohesive framework for wilderness administration. Currently, despite working from the same legislative language, different land agencies regulate independently with each of their own wilderness areas. This creates a disparity in treatment depending on who administers it, as seen in the piecemeal efforts to ban fixed anchors across the years and wilderness areas. While each wilderness area is unique and requires individualized plans to best manage the area with the resources at hand, these management plans should not be so far removed from one another in their regulation of activities. A managing body superseding the four land management agencies could formally coordinate management policies nationally and ensure consistent regulations for recreation between the four agencies' wilderness areas. Such a body does exist, but it is ineffective, and each agency still generally follows its internal procedures updated at different times.<sup>143</sup> This coordinating body must have additional authority to marshal the agencies.

Another issue lies in the funding mechanisms and administration of each area. Although wilderness areas have grown since the Wilderness Act was implemented in 1964, funding for agency oversight has not kept up.<sup>144</sup> Funding deficits lead to fewer bodies to implement management plans, incentivizing less resource-intensive total bans on climbing. Even compliance with NEPA's environmental assessments may prove difficult. Congress should allocate specific funding for Wilderness Areas specifically to ensure continued protection and enjoyment. While this would alleviate budgetary issues, it does not address the administration difficulty with each area and particularly with agency staff. While each group may advocate for their particular use, these suggestions may be stymied by agency leaders who lack experience or dismiss active engagement.<sup>145</sup> Setting hard targets and expertise requirements for agency leaders may alleviate this issue. Finally, soliciting engagement with local volunteers for wilderness areas for a formal stewardship program may prove beneficial in engaging the community in the preservation of access to wilderness.

## VI. Conclusion

Climbing has come a far way from its rebellious beginnings. Now, far from eschewing regulations, local climbing groups acknowledge the need to balance environmental protection with access to the rock that make their sport possible. They must embody a land ethic in their other pursuits. While agencies may face administrative difficulties preserving climber access with policy consideration required by their organic statues and the Wilderness Act, climbers are advocates that are necessary to continue pushing for wilderness protection. Climbers may acknowledge the need for self-regulation to reduce enforcement by wilderness agencies. With

additional funding and an overarching coordination body, land agencies overseeing wilderness areas may find help in the community to ensure the legacy of wilderness.

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